



CRP (PD) No.3446 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 15.06.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

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and

CMP.No.15983 of 2017

1. Ramasamy
2. Venkatachalam
3. Senthil

... Petitioner/ Respondent

Vs.

1. Jothi
2. Jeyammal
3. Mani

...Respondents / Petitioners

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and decreetal order of the District Munisif at Perambalur; dated 30-06-2016 in I.A.No.572 of 2015 in O.S.No438 of 2013.

For Petitioners : Mr.P.Valliappan

for Mr.M.S.Gogulraj

Fore RR2 1 to R3 : No appearance



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ORDER

The petition is preferred against the fair and decreetal order of the District Munsif Court, Perambalur, dated 30.06.2016 in I.A.No.572 of 2015 in O.S.No.483 of 2013.

2.The petitioners are the defendants 1, 3 &4 in O.S.No.483 of 2013.

The respondents/plaintiffs have filed the above suit for the following reliefs:

a) Pass a preliminary decree of partition by dividing the suit property into six equal shares and allot three such share to the plaintiffs and put the plaintiffs in separate possession in it.

b) pass a decree of declaration by declaring the registered settlement deed dt.03.09.2013, Doc No.4951/2013. S.R.O. Perambalur executed by the 1st defendant in favour of the 4th defendant as null and void.

c). Pass a decree of permanent injunction against the defendants by restraining them and their men from in anyway encumbering or alienating or in any other manner executing any documents with specific boundary in the suit property.

d). Pass a final decree by appointing a court Advocate



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commissioner to effect division of the properties as per preliminary decree.

e). Awarding cost of the suit.

f). Pass such other and further relief that this Honourable Court deems fit and proper in the circumstances of this case and thus renders justice.

3.While so, the revision petitioners/defendants have filed I.A.No.572 of 2015, in the above suit under Order 7 Rule 11 CPC for rejecting the plaint. In the said petition the revision petitioner/defendants would submit that the second relief sought in the plaint for declaring the settlement deed dated 03.09.2013 executed by the 1st defendant in favour of the 4th defendant as null and void. The above settlement deed executed by the 1st defendant in respect of the said property is valued for Rs.6,45,000/-. Therefore, the value for such relief fixed by the plaintiffs/respondents at Rs.1000/- is incorrect. It is submitted that when the document is sought to be cancelled, the Court fee ought to have been paid as per Section 40 of Tamil Nadu Court Fees and Suit Valuation Act, i.e., for the value of the property which is mentioned as



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Rs.6,45,000/- as on 03.09.2013 and for which the Court fees ought to have been paid at Rs.48,750/-. It is further stated that the District Munsif Court, Perambalur has no jurisdiction to maintain the above suit, since the value of the suit properties are more than Rs.1,00,000/- which exceeds the pecuniary jurisdiction of the above said Court. Therefore, the suit is liable to be rejected.

4. On the other hand, the plaintiffs/respondents in their counter affidavit has stated that on 03.09.2013, the 1st revision petitioner/1st defendant executed a nominal settlement deed in favour of the 4th defendant/3rd revision petitioner herein for a sum of Rs.6,45,000/-. The 1st defendant/1st revision petitioner has no right to execute the said settlement deed. Moreover, the plaintiffs are not parties to the document and the same will not bind the plaintiffs. Hence, the plaintiffs have filed the above suit seeking the relief to declare of the said settlement deed dated 03.09.2013 as null and void and not claiming the relief for cancellation of the said settlement deed.

5. It is further submitted on the side of the plaintiffs that the 2nd



defendant in his written statement admitted that the suit property is ancestral property and the plaintiffs and defendants 1 to 3 are entitled to 1/6 share. The defendants are questioning the pecuniary jurisdiction only after filing their written statement. Hence, the petition is not maintainable and liable to be dismissed.

6. After perusing the records, arguments advanced on both sides, the trial Court dismissed the above petition for rejection of plaint.

7. Aggrieved by this, the defendants 1, 3 and 4/revision petitioners preferred the above revision petition on the following grounds stating that, the trial Judge has erroneously dismissed the application filed by the defendants under Order 7 Rule 11 of C.P.C. The learned trial Judge ought to have seen that as per the plaint document, namely, that the property mentioned in the settlement deed dated 03.09.2013, the value of it is mentioned as Rs.6,45,000/- and hence, the above suit cannot be maintained before the District Munsif Court due to lack of pecuniary jurisdiction. The learned trial Judge erred in rendering findings, which have the effect of decreeing the suit



filed by the plaintiffs/respondents which is not maintainable in law. It is

further submitted that the learned trial Judge failed to take note of the fact that the defendants never admitted the suit properties as ancestral properties and that the plaintiffs/respondents have no share over the properties. According to the revision petitioners/defendants 1, 3 & 4, the suit properties are the self acquired properties of the 1st defendant who settled the same in favour of the 3rd revision petitioner/4th defendant under the registered settlement deed on 03.09.2013. Further, ground raised by the revision petitioners/defendants is that the learned judge erred in not considering the provisions under Section 12 to 40 of the Tamil Nadu Court Fees Act and Suit Valuation Act 1955. The learned Judge failed to see that the issue of lack of jurisdiction of the Court goes to the root of the matter and therefore the suit which is not maintainable for lack of jurisdiction, cannot be entertained.

8.To support his contention the learned counsel has relied upon the decided case reported in **2019 6 CTC 1** in which it is held that,

" Suit properties ought to have been valued under Section 25(a) of Act- the findings without any material that suit beyond



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pecuniary jurisdiction of Court reflex non application of mind the Court below ought to have directed the Taxing Officer to determine valuation of property and Court fees payable called for Report and decided pecuniary jurisdiction on that basis- Failure to follow such procedure and finding without any basis warrants interference under Article 227."

9.The learned counsel also relied upon the decision reported in **2022 (2)**

CTC 513 in which it is held that,

"conflict between substantial law and procedural law- Code of Civil Procedure is procedural law and Tamil Nadu Court fees and Suits Valuation Act is substantial law- Substantial law will prevail over procedural law- Court has to hear issue regarding valuation of suit property or payment of Court fee as preliminary issue if defendant files independent application to that effect and not otherwise- Once such application is filed Court has not discretion and it shall be heard as preliminary issue."

10. The learned counsel for the revision petitioners/ defendants also



made reference to the observation made in the decided case reported in **2017**

WEB COPY (6) **CTC 201** in which it was held,

" Suit instituted for declaration of title and to declare registered sale deeds as null and void- Plaintiff valued relief of declaration to declare deed as void under Section 25(d) and paid Court fee thereon- plaintiff party to impugned sale deeds- Defendant filed Application to reject plaint in as ,much as plaintiff ought to have valued suit under Section 40 not under Section 25 (d)- issue relating to Court fee held to be mixed question of law and fact by High Court- Word "Cancellation" implies that person suing should be party to document-Case would fall under Section 40- proper valuation of suit property stands on different footing than payable-finding of High Court that payment of Court fees has to be determined on basis of evidences erroneous- Relief of declaration should have been valued under Section 40."

11. The learned counsel for the revision petitioners/ defendants also relied upon the case reported in **2005 (5) CTC 190** in which it is held that,



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"when party to suing challenging document, he must first obtained cancellation of such document before getting any further relief- Attacking sale deed as having been obtained under fraud and misrepresentation, Plaintiff cannot be see any further relief without setting aside sale deeds-though prayer is couched in form of seeking declaration that document is not valid and not binding, relief in substance in directly amounts to seeks for cancellation of sale deeds- Court fee under Section 40 of Act is payable."

12.The learned counsel for the revision petitioners/defendants would submit that, for the above reasons, the findings of the learned trial Judge without any basis warrant interference.

13.Heard on both sides, records perused.

14. The learned trial Judge in the impugned order dated 30.06.2016 dismissed the petition for rejection of plaint by stating that the 1st defendant has no right to execute the settlement deed and since the plaintiffs are not parties to the said settlement deed, the Court fee paid under 25(d) is correct. He went to the extent of stating that the 4th defendant is only a name lender



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and the title deed is a result of fraud or collusion between the 4th defendant

and the 1st defendant. Without any evidence on record, the learned trial Judge

has given a finding that the 1st defendant has no right to execute the alleged

gift deed which is a result of fraud and collusion between the 1st and 4th

defendant. As rightly pointed out by the learned counsel for the revision

petitioner/defendants 1,3 &4, the learned District Munsif, Perambalur, ought

to have framed the issue regarding valuation of suit property or payment of

Court fees as preliminary issue, since the issue relating to Court fee is mixed

question of law and fact. Moreover, issues relating to jurisdiction of Court

must be treated as preliminary issue before the Court decides the case on

merits. Therefore, the findings of the learned Judge without any material to

determine the value of the suit properties and about the Court fee payable,

cannot decide the case on merits in an application filed for rejection of plaint.

15.The learned trial Judge ought to have framed the preliminary issues

on jurisdiction point to decide whether the said Court is competent to try the

above suit and about the Court fee payable. The learned trial Judge failed to

consider the provisions under Section 12 to 40 of the Tamil Nadu Court Fees



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and Suit Valuation Act. Hence, the findings rendered by the trial Judge calls for interference.

16. Accordingly, for the forgoing reasons the fair and decreetal order passed by the Court in I.A.No.572 of 2015 in O.S.No.483 of 2013 dated 30.06.2016 on the file of the learned District Munsif, Perambalur is hereby set aside. The learned trial Judge is directed to frame the preliminary issues regarding the valuation of the properties and Court fees payable and also the issue regarding pecuniary jurisdiction of the Court and pass the final order within a period of two months from the date of receipt of a copy of this order. The respondents/plaintiffs and the revision petitioners/defendants 1, 3 & 4 are directed to appear before the trial Court and advance their respective submissions in this regard.

17. With the above direction, the Civil Revision Petition is allowed. No costs. consequently, connected miscellaneous petition is closed.



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Index: Yes/No

Speaking/Non-speaking order

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